

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

BEFORE THE
BOARD OF VOCATIONAL NURSING
AND PSYCHIATRIC TECHNICIANS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Citation
Against:

Citation No. 10-0110-L

LAURI MICHELLE HICKEY
4090 Sierra Avenue
Norco, CA 92860

OAH No. 2010100142

Vocational Nurse License No.
VN 183204

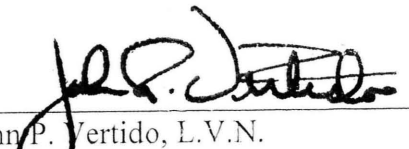
Respondent.

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Vocational Nursing and Psychiatric Technicians as the Final Decision in the above entitled matter.

This Decision shall become effective on July 14, 2011.

IT IS SO ORDERED this 14th day of June, 2011.



John P. Vertido, L.V.N.
President

BEFORE THE
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

Matter of the Citation Against:

LAURI MICHELLE HICKEY, VN

Vocational Nurse License No. 183204,

Respondent.

Case No. 10-0110-L

OAH No. 2010100142

PROPOSED DECISION

Agustin F. Lopez II, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on March 1, 2011, in San Diego, California.

David E. Hausfeld, Deputy Attorney General, Office of the Attorney General, State of California, represented complainant Teresa Bello-Jones, J.D., M.S.N., R.N., Executive Officer, Board of Vocational Nursing and Psychiatric Technicians, Department of Consumer Affairs, State of California (Board).

Respondent, Lauri Michelle Hickey, VN, personally appeared, represented herself, and was present throughout the proceeding.

The matter was submitted on March 1, 2011.

FACTUAL FINDINGS

Jurisdictional Matters

1. On December 23, 1997, the Board issued respondent license number VN 183204. Respondent's license expires August 31, 2011.
2. On July 7, 2010, the Board issued citation number 10-0110-L to respondent alleging respondent violated Welfare and Institutions Code, section 10980(c)(2) for engaging in fraud to obtain public aid. The citation further alleged her violation is substantially related to the functions and responsibilities of a licensed vocational nurse. The citation carried a fine of \$500.
3. The citation was served on respondent, who timely filed a notice of appeal.

4. On March 1, 2011, the administrative record was opened, jurisdictional documents were presented, opening statements were given, documentary evidence was introduced, sworn testimony was provided, closing arguments were given, the record was closed, and the matter was submitted.

Underlying Conviction

5. On October 6, 2009, respondent pled guilty to violating Welfare and Institutions Code, Section 10980, subdivision (c)(2), fraud to obtain public aid in the form of food stamps.

6. While receiving food stamps, respondent began temporary employment and failed to report her income as required. Respondent admitted she was aware of her duty to report supplemental income while on food stamps. As such, she contacted a social worker with the agency in charge of regulating food stamps.

7. In a letter to the board, Respondent stated, "I was calling because I was concerned about my job as well [sic] additional moneys I was receiving due to child support. After I discussed the child support issue, he was very short and curt with me on the phone. He told me just to report the additional child support and then hung up. Based upon this conversation, I did not report the earned income from my employer."

8. Upon learning of the violation, respondent made immediate arrangements to pay back the value of the food stamps used. Additionally, she expressed responsibility and genuine remorse for her failure to report.

9. Respondent was convincing and candid in that she took responsibility for her failure to report additional income. Likewise, respondent successfully established she's not a danger to the public welfare as a result of the foregoing actions.

10. As a result of her conviction, respondent was required to pay back the value of the stamps (\$1,539.00), pay additional court fines and report to the Sheriff for 14 days of jail time. Respondent complied with all requirements of her plea.

LEGAL CONCLUSIONS

1. Administrative proceedings are not intended to punish the licensee, but rather to protect the public. (*Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 785.) The main purpose of license discipline is protection of the public through the prevention of future harm, and the improvement and rehabilitation of the licensee. (*Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 772.)

2. The appropriate standard of proof in administrative citation proceedings is the preponderance of the evidence standard. (*Owen v. Sands* (2009) 176 Cal.App.4th 985, 992.)

3. Protection of the public is the highest priority for the Board of Vocational Nursing and Psychiatric Technicians in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount. (Bus. & Prof. Code, § 2841.1.)

Disciplinary Authority

4. "The board may suspend or revoke a license issued under this chapter for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the following:

...

(f) Conviction of a crime substantially related to the qualifications, functions, and duties of a licensed vocational nurse, in which event the record of the conviction shall be conclusive evidence of the conviction.

...

(j) The commission of any act involving dishonesty, when that action is related to the duties and functions of the licensee." (Bus. & Prof. Code § 2878, subds. (a), (f) & (j).)

5. "A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions and duties of a licensed vocational nurse is deemed to be a conviction within the meaning of this article. The board *may* order the license suspended or revoked, or *may* decline to issue a license, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information or indictment." (Bus. & Prof. Code § 2878.6) (Emphasis added.)

6. Under Business and Professions Code section 125.9, the Board has the authority to issue a citation to a licensee for violation of the Vocational Nursing Practice Act, and under California Code of Regulations, title 16, section 2523 the Board's executive officer may issue a citation in lieu of proceeding with more formal disciplinary action.

7. Disciplinary citations are classified into three categories based upon the severity of the discipline taken and the fines associated with that discipline. Class A citations apply to more serious discipline, whereas class B citations are for less severe discipline, and finally class C citations are for "minor or technical violations that are neither directly nor

potentially detrimental to patients nor directly or potentially impacts their care. . . .” (Cal. Code Regs., tit. 16, § 2423.2.)

8. “In any citation which includes a fine, the following factors shall be considered in determining the amount of the fine to be assessed:

- (a) Gravity of the violation.
- (b) History of previous violations of the same or a similar nature.
- (c) The good or bad faith exhibited by the cited person.
- (d) Evidence that the violation was willful.
- (e) The extent to which the cited person cooperated with the board's investigation.

(f) The extent to which the cited person has remediated any knowledge and/or skills deficiencies which could have injured a patient.

(g) Any other mitigating or aggravating factors.” (Cal. Code Regs., tit. 16, §2523.4.)

Discussion

9. It is undisputed that respondent was convicted of a crime substantially related to the qualifications, functions and duties of a licensed vocational nurse. Therefore, some form of discipline is appropriate.

10. The issue is what measure of discipline should be imposed.

Here, respondent was issued a class C violation. (Cal. Code Regs., tit. 16, § 2423.2, subd. (e).) By definition, respondent’s transgression was for a minor or technical violation that was neither directly nor potentially detrimental to patients nor directly or potentially impacted their care.

Respondent’s conviction involved not telling the truth to a government agency. Truthfulness is a linchpin of good nursing. But the facts of this case suggest that this conviction does not show respondent has a propensity to engage in acts which could pose a danger to the public or patients in her care.

In addition, respondent was able to show mitigating circumstances exist. Respondent succeeded in carrying her burden to establish that she received instructions from the social worker to “just to report the additional child support.” While this does not eliminate the fact that she willfully failed to report additional income, it establishes she had a good faith reason for why she failed to do so. Nonetheless, her failure was due either to bad information or a negligent misunderstanding by her of the information she received from the social worker. Her actions are understandable, albeit misguided, in that a person receiving public assistance

can expect to rely upon instructions from an employee for the applicable agency.

She has proven genuine remorse in that she admitted it was ultimately her responsibility to know she was required to report additional income. Nonetheless, she proved that her error has cost her dearly. She was booked and served jail time. She paid back the value of the food stamps. In addition, she has suffered the added social and professional stigma corresponding to disciplinary proceedings. It was obvious respondent takes great pride in being a good nurse, and the stigma weighed heavily upon her.

The exercise of proper discretion requires that any determination of the degree of discipline consider the foregoing mitigating factors.

During the hearing, Mr. Hausfeld represented that while the Board would have a record of her citation, no other obvious public notice of this discipline would be present; provided she paid the fine. Certainly, both the citation and her conviction would be available and public record should someone seek to investigate further. But, the evidence of this disciplinary proceeding should not cause additional professional stigma or prejudice.

11. Cause was established to sustain the citation.

12. However, given the mitigating factors involved, and the fact that administrative proceedings are designed to protect the public – not punish the licensee – a reduction in the penalty amount is called for. Any amount of penalty over \$150 goes beyond public protection and serves to punish respondent.


ORDERS

The violations set forth in Citation Order No. 10-0110-L are affirmed.

Respondent Lauri Michelle Hickey shall pay \$150 to the Board of Vocational Nursing and Psychiatric Technicians within sixty (60) days of the effective date of this Decision.

While the citation includes a charge for cost recovery, no evidence was presented supporting this claim. Consequently no cost recovery is awarded.

DATED: April 15, 2011


AGUSTIN F. LOPEZ II
Administrative Law Judge
Office of Administrative Hearings

**BOARD OF VOCATIONAL NURSING & PSYCHIATRIC TECHNICIANS**

2535 Capitol Oaks Drive, Suite 205, Sacramento, CA 95833-2945

Phone (916) 263-7800 Fax (916) 263-7857 Web www.bvnpt.ca.gov**CITATION ORDER**

July 7, 2010

Lauri Hickey
4095 Sierra Avenue
Norco, CA 92860

Dear Ms. Hickey:

Pursuant to Business and Professions Code Section 125.9, the Board of Vocational Nursing and Psychiatric Technicians (hereinafter referred to as the "Board") issues this class 'C' citation.

Date of Issuance	Citation Number	Fine Assessed
July 7, 2010	10-0110-L	\$500.00

Licensing History

Board records reflect that on **December 23, 1997**, the Board issued license number **VN 183204** to **Lauri Michelle Hickey**; said license expired on **August 31, 2011**.

Cause for Citation

Violation of **Section 2878 (a)** of the California Business and Professions Code, which reads as follows:

"The board may suspend or revoke a license issued under this chapter for any of the following:
(a) Unprofessional conduct..."

Violation of **Section 2878 (f)** of the California Business and Professions Code, which reads as follows:

"The board may suspend or revoke a license issued under this chapter for any of the following...
(f) Conviction of a crime substantially related to the qualifications, functions, and duties of a licensed vocational nurse, in which event the record of the conviction shall be conclusive evidence of the conviction..."

Violation of **Section 2878 (j)** of the California Business and Professions Code, which reads as follows:

"The board may suspend or revoke a license issued under this chapter for any of the following:
(j) The commission of any act involving dishonesty, when that action is related to the duties and functions of the licensee."

Explanation of Violation

A Board investigation confirmed your October 6, 2009 conviction for violating Welfare and Institutions Code Section 10980 (c) (2), fraud to obtain aid. Your conviction is substantially related to the functions and responsibilities of a licensed vocational nurse. The Board is compelled to convey to you that your acts have potential to jeopardize your privilege of practicing nursing. **Future substantiated reports that you have engaged in similar behavior or otherwise violated the law or regulations governing your practice as a vocational nurse may result in formal disciplinary action against your license, up to and including revocation.**

Fine and/or Order of Abatement

You are hereby ordered to pay an administrative penalty (fine) in the amount of **\$500.00** within 30 days from the date this citation was served (mailed); no later than **August 7, 2010**.

Payment of this administrative penalty should be made directly to the Board at 2535 Capitol Oaks Drive, Suite 205, Sacramento, CA 95833. Payment will only be accepted in the form of a cashier's check or money order and must include the citation number. Please complete and submit the enclosed Payment of Fine – Waiver of Appeal Rights form with your payment.

Appeal Rights

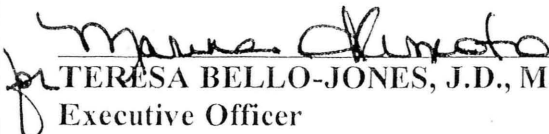
You may appeal this citation or any portion thereof. Please use the enclosed Notice of Appeal form to request an Informal Citation Review Conference or a formal Administrative Hearing.

Your request for an Informal Citation Review Conference must be in writing and submitted to the Board within **fourteen (14) calendar days after service of the citation**.

Your request for a formal Administrative Hearing must also be in writing and submitted to the Board within **thirty (30) calendar days after service of the citation**.

Pursuant to Section 125.3 of the Business and Professions Code, the Board has authority to request the administrative law judge to direct you to pay reasonable costs for the investigation and/or enforcement of this citation. Please refer to the enclosed Statement of Rights for additional appeal information.

Failure to request an Informal Citation Review or Administrative Hearing within the time specified above will waive your right to contest this citation. If you neither pay the fine nor request a review within the allotted time frame, **your license will not be renewed** until the fine is paid.


TERESA BELLO-JONES, J.D., M.S.N., R.N.
Executive Officer

July 7, 2010

Date

ATTACHMENTS

- Payment of Fine – Waiver of Appeal Rights
- Notice of Appeal
- Statement of Rights

AS